

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

DEENA GEPHARDT, *et al.*,

Defendants.

Case No. C07-5259RJB

ORDER STRIKING REPORT  
AND RECOMMENDATION AS  
MOOT

This matter comes before the Court on the Report and Recommendation of U. S. Magistrate Judge J. Kelley Arnold. Dkt. 47. The Court has considered the Report and Recommendation, objections to the Report and Recommendation, if any, and the record.

Plaintiff filed this 42 U.S.C. 1983/Bivens action on May 15, 2007. Dkt. 1. Plaintiff is incarcerated at the Northwest Detention Center ("NDC") and is going through the process of being deported. *Id.* Plaintiff names employees of GEO, a contractor at the NDC, and federal employees as defendants. *Id.*


On November 19, 2007, Defendants Charles McBurney, Tony Nicholas, and William McHatton (all employees of GEO) filed an answer to the complaint. Dkt. 28. Defendants McBurney, Nicholas, and McHatton make a counterclaim for abuse of process, alleging that Plaintiff's claims were not made in good faith, were frivolous, and intended to harass and intimidate them. *Id.* Plaintiff filed a Motion for Judgment on the Pleadings, seeking dismissal of Defendants McBurney, Nicholas, and McHatton's counterclaim. Dkt. 33. On January 9, 2008, Judge Arnold filed his Report and Recommendation regarding Plaintiff's Motion for Judgment on the Pleadings. Dkt. 47. On January 10, 2008, Plaintiff and Defendants

1 McBurney, Nicholas, and McHatton stipulated that the matter “has been fully settled and compromised and  
2 may be dismissed with prejudice and without costs as to Defendants McBurney, Nicholas, and McHatton.”  
3 Dkt. 46. The order was entered that same day. Dkt. 48. On January 22, 2008, Judge Arnold entered an  
4 order striking Plaintiff’s pending Motion for Judgment on the Pleadings (Dkt. 33) as moot. Dkt. 51, at 1.  
5 Judge Arnold noted that the stipulation dismissing Defendants McBurney, Nicholas, and McHatton did not  
6 specifically state whether the counterclaim was dismissed. *Id.* Judge Arnold informed the parties that the  
7 Court would consider the counterclaims as having been dismissed by the January 10, 2008 stipulation  
8 unless someone notified the Court to the contrary within 30 days. *Id.* Thirty days have now lapsed, and  
9 no further pleadings have been filed regarding the status of the counterclaim. The Court is left to assume  
10 that the counterclaim was either resolved by the stipulation or abandoned. In any event, the Report and  
11 Recommendation, filed on January 9, 2008, addressing Plaintiff’s Motion for Judgment on the Pleadings  
12 regarding Defendants McBurney, Nicholas, and McHatton’s counterclaim (Dkt. 47) should be stricken as  
13 moot.

14 Accordingly, it is hereby **ORDERED**:

- 15 • The Report and Recommendation (Dkt. 47) is **STRICKEN AS MOOT**;
- 16 • The Clerk is directed to send copies of this Order to Plaintiff, all counsel of record, and to the Hon.  
17 J. Kelley Arnold.

18 DATED this 28<sup>th</sup> day of February, 2008.

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20 ROBERT J. BRYAN  
21 United States District Judge  
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